

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
WANDA SINCLAIR, et al., : Docket #13cv8304
Plaintiffs, :
- against - : New York, New York
CITY OF NEW YORK, et al., : November 3, 2014
Defendants. :
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PROCEEDINGS BEFORE
THE HONORABLE JAMES L. COTT,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE COURT: This is the case of Sinclair,
3 Sherard, Mercado, and Holder v. New York City and several
4 other named defendants. The docket number is 13cv8304.
5 The case is assigned to Judge Castel. He has referred the
6 case to me for general pretrial supervision, including
7 settlement. We have had a lengthy settlement conference
8 today, and it's my understanding that the parties have
9 reached an agreement as to the material terms of a
10 settlement.

11 It is further my understanding that the parties
12 desire to place those material terms on the record at this
13 time with the understanding that they will be memorializing
14 their agreement in a written instrument.

15 The purpose behind this proceeding is, however, to
16 ensure that the parties have an enforceable and binding
17 agreement such that, if either side needed to, they would
18 be able to seek enforcement of the settlement terms in the
19 unlikely event that they don't otherwise memorialize it in
20 writing.

21 Let me ask Mr. Maduegbuna is that your
22 understanding of how we're proceeding?

23 MR. SAMUEL MADUEGBUNA: Yes, Your Honor.

24 THE COURT: And, Miss Canfield, is that your
25 understanding of how we're proceeding?

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MS. DONNA CANFIELD: Yes, Your Honor.

THE COURT: All right. Let me suggest, first, that counsel put the terms on the record, and once counsel have done so to their collective satisfaction, then I will ask their respective clients if they understand those terms and agree to be bound by those terms. So I don't know which of you wishes to proceed.

MR. MADUEGBUNA: Counsel should go.

THE COURT: Miss Canfield, why don't you set forth on the record what you understand those terms to be, and then I'll ask Mr. Maduegbuna if he has something that he wishes to supplement or otherwise modify in some fashion.

MS. CANFIELD: The defendants have agreed to pay each of the plaintiffs a back pay amount. For plaintiff Sinclair, defendants have agreed to pay her a back pay from November 20, 2010 to the present at a rate of 8 percent on her current \$75,754 annual salary. For plaintiff Mercado we agree to pay her a back pay amount of 8 percent on her current \$76,107 annual salary. That's from November 20, 2010 to present. For plaintiff Sherard, defendants agree to pay her a back pay on her \$72,616 salary from November 20, 2010 to the date of her retirement. I apologize, Your Honor. For plaintiff Sherard we are paying her from November 20, 2009 to the date of her retirement, which is approximately 3.5 years.

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And for plaintiff Holder defendants agree to pay her a back pay amount on her \$60,143 annual salary from November 20, 2009 to the date of her retirement.

Now, for each of the plaintiffs, to the extent that their annual salaries were subjected to a collective bargaining increase, that will be factored into the base annual salary rate. Defendants also agree to pay each of the defendants \$50,000 compensatory damages, and defendants agree to an amount of \$50,000 for attorney's fees and costs.

Finally, to the extent each plaintiff wishes, the amounts that they, each plaintiff is receiving in back pay will be pensionable, and that will be articulated in the settlement agreement. Defendants do request, however, that plaintiffs provide exact dates that they want those amounts to be pensionable to. I think that --

THE COURT: That covers what your understanding is?

MS. CANFIELD: -- covers the terms of the agreement.

THE COURT: Mr. Maduegbuna.

MR. MADUEGBUNA: Your Honor, thank you. Just a few clarifications. With respect to plaintiffs Diane Sherard and Sharon Holder, just to be clear on the record, defendants agree to pay them back pay on their salaries at the rate of 8 percent. I don't know if you mentioned that.

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THE COURT: Yes, that was I believe said, yes.

MR. MADUEGBUNA: Okay, I just want to be clear.

THE COURT: It's 8 percent for all four of the plaintiffs.

MR. MADUEGBUNA: For all four of them, yes, okay. Now, we also understand that those back pay payments for all plaintiffs will be issued as a check by way of W2. Is that correct?

MS. CANFIELD: I'm sorry, can you repeat that please?

MR. MADUEGBUNA: The back pay payment for all four plaintiffs will be issued by way of a check subject to deductions on the W2.

MS. CANFIELD: Correct, all back pay is subject to all payroll deductions.

MR. MADUEGBUNA: Okay. And the other thing is with respect to plaintiffs Sinclair and Mercado, the 8 percent increase on their salary, as described by counsel, will continue from the retroactive date of November 20, 2010 up until the date of their retirement. Is that correct?

MS. CANFIELD: Correct, the 8 percent will be the increase in their salary going forward.

MR. MADUEGBUNA: And then with respect to pension, our understanding is that the pension will be calculated based

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on the pension plan that they are in. So I wasn't quite clear what counsel means by to the extent that they wish, and that is pensionable, that it should provide amounts and the dates they want the amounts pensionable. I'm not quite clear on that.

MS. CANFIELD: The plaintiffs are receiving four years of back pay, but if they only want three years to be pensionable, they need to designate that to counsel so that can be included in the settlement agreement. If that's what they want. They can have it spread over the four years.

(pause in proceeding)

MS. CANFIELD: No, counsel was just recommending that they probably want to do it over the four years instead of the three. But it's up to the plaintiffs how they want to allocate it.

MR. MADUEGBUNA: I understand that. And all of this would be subject to a settlement agreement that will be reviewed and signed by the plaintiffs.

MS. CANFIELD: Correct.

MR. MADUEGBUNA: Okay.

THE COURT: Well, just - I'm sorry to interpose myself. It will be subject to that, but my understanding, and this was the purpose of my earlier question, was that in the highly unlikely event that you are not able to memorialize the

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2 agreement in a written instrument, what we're putting on the
3 record tonight are going to be enforceable terms such that you
4 would be able to enforce this agreement on behalf of the
5 plaintiffs if the City otherwise no longer said it was, in
6 fact, what they were willing to do. And conversely, the City
7 could seek to move to enforce this agreement if your clients
8 for some reason decided not to carry forward with it. That's
9 my understanding of why we were putting this on the record
10 tonight. Is that not correct?

11 MR. MADUEGBUNA: That is correct.

12 THE COURT: So it is subject to - I mean it is
13 further to perhaps I would say rather than subject to because
14 to say subject to, it seems to me, means that what we're doing
15 here tonight won't have any binding and enforceable effect,
16 and my understanding is both sides wanted to, in fact, have a
17 binding and enforceable effect. Correct?

18 MR. MADUEGBUNA: That's correct, Your Honor, yes.

19 THE COURT: Is that your understanding, Miss
20 Canfield, as well?

21 MS. CANFIELD: Yes, it is, Your Honor.

22 THE COURT: All right.

23 MR. MADUEGBUNA: So what I meant to say is that
24 there will be an agreement that spells out the fine details of
25 this, including what kind of W2 or W9 forms that will be

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issued and how payments will be --

THE COURT: I'm not sure the recording is - because you turned your head. So you're talking more to Miss Canfield than on the record. But if I can restate it, what we've put on the record tonight, as I understand it, are the material terms of settlement. There are many other terms that have to be worked through, all the logistics, how checks will be cut, to whom, and all of those sorts of things, and the issues with respect to the pension and all of that will obviously be memorialized in your written agreement. That's beyond the scope of what we're putting on the record tonight, and I think that's understood by both sides, correct?

MR. MADUEGBUNA: That's correct, Your Honor.

THE COURT: Correct, Miss Canfield?

MS. CANFIELD: Correct.

THE COURT: All right, anything else, Mr. Maduegbuna?

MR. MADUEGBUNA: I think that's it, Your Honor.

THE COURT: All right, Miss Canfield, anything else?

MS. CANFIELD: Nothing more.

THE COURT: All right, let me then ask each of the individual plaintiffs if they understand the terms that have been put on the record tonight and if they agree to be bound

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by those terms. So let me first ask Miss Sinclair, do you understand the terms of the settlement?

MS. SINCLAIR: Yes, I do understand the terms of the settlement.

THE COURT: And do you agree to be bound by those terms?

MS. SINCLAIR: I agree to be bound by the terms.

THE COURT: And, Miss Sherard, do you understand the terms of the settlement?

MS. SHERARD: Yes, I understand the terms.

THE COURT: And do you agree to be bound by them?

MS. SHERARD: Yes, I do.

THE COURT: Miss Mercado, do you understand the terms of the settlement?

MS. MERCADO: Yes, I do.

THE COURT: And do you agree to be bound by them?

MS. MERCADO: Yes, I do.

THE COURT: And, Miss Holder, do you understand the terms of the settlement?

MS. HOLDER: Yes, I do.

THE COURT: And do you agree to be bound by them?

MS. HOLDER: Absolutely.

THE COURT: Mr. Schreiber, on behalf of HPD, are you authorized here tonight to bind the agency to the extent

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it needs to be bound in the proceeding?

MR. SCHREIBER: Yes, Your Honor.

THE COURT: And you understand all of these terms?

MR. SCHREIBER: I do.

THE COURT: And you are binding the agency to this agreement?

MR. SCHREIBER: HPD is bound.

THE COURT: And, Miss Canfield, on behalf of the City, you're authorized to enter into this agreement on its behalf?

MS. CANFIELD: Yes, Your Honor.

THE COURT: All right. Is there anything else counsel believes we need to put on the record, either that needs to be asked of any of the parties or otherwise with respect to the terms of the settlement?

MR. MADUEGBUNA: No, Your Honor.

THE COURT: Miss Canfield?

MS. CANFIELD: No, Your Honor.

THE COURT: All right, very well. Let me say a couple of things. First of all, I will report this to Judge Castel who will obviously be very pleased that the parties have been able to resolve their lawsuit, and I will also, I will tell him that the parties plan to submit some kind of a stipulation to the Court. Shall I report to him that that

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would likely happen within 30 days of today? Is that realistic?

MS. CANFIELD: Yes, Your Honor.

MR. MADUEGBUNA: Yes.

THE COURT: All right, so I will so advise him. Let me also thank counsel for your hard work today. On behalf of the Court, it's very much appreciated. And let me also especially thank the individual plaintiffs who are not lawyers who have now spent the better part of eight hours in the courthouse today, and your patience is very much been appreciated. I know this was a long and challenging morning and afternoon for you all, but I'm grateful that you were able to stick with it and that we were able to get to a resolution of your case.

So thank you all very much, and I wish you a good evening.

MR. MADUEGBUNA: Okay. Thank you, Your Honor.

MS. CANFIELD: Thank you.

(Whereupon the matter is adjourned.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Sinclair, et al. v. City of New York, et al., Docket #13cv8304, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: March 1, 2015